

**Court File No:** CV-21-00664273-00CL

**Court File No:** CV-21-00665375-00CL

**REPORT OF KPMG INC.,  
IN ITS CAPACITIES AS RECEIVER AND MANAGER OF**

**Southmount Healthcare Centre Inc. *Et Al.***

**AND OF**

**Victoria Avenue North Holdings Inc.**

**JANUARY 23, 2023**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

BETWEEN:

AMERICAN GENERAL LIFE INSURANCE COMPANY, LEXINGTON INSURANCE  
COMPANY, AND THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658 ONTARIO LTD.,  
2009 LONG LAKE HOLDINGS INC., 65 LARCH HOLDINGS INC., 100 COLBORNE  
HOLDINGS INC., 240 OLD PENETANGUIISH HOLDINGS INC., GROSS PROPERTIES  
INC., 180 VINE PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, and under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

BETWEEN:

AMERICAN GENERAL LIFE INSURANCE COMPANY and NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA.

Applicants

- AND -

VICTORIA AVENUE NORTH HOLDINGS INC. and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

**APPLICATION UNDER section 243 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, and under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43**

**JOINT RESPONDING REPORT OF KPMG INC.**  
**In its capacities as Receiver and Manager**

**DATED JANUARY 23, 2023**

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**APPENDIX “C”** – Southmount Et Al. May 24 Distribution & Ancillary Relief Order and Southmount Et Al. July 15 Distribution & Ancillary Relief Order

**APPENDIX “D”** – Victoria May 24 Distribution & Ancillary Relief Order, and Victoria October 14 Distribution & Ancillary Relief Order

**APPENDIX “E”** – Correspondence from Norton Rose Fulbright Canada LLP to counsel for the Moving Parties, dated November 18, 2021

**APPENDIX “F”** – Correspondence from Norton Rose Fulbright Canada LLP to counsel for the Moving Parties, dated January 31, 2022

## I. INTRODUCTION

1. On June 29, 2021, upon application by American General Life Insurance Company, Lexington Insurance Company, and The Variable Annuity Life Insurance Company (collectively, the “**Southmount Et Al. Applicants**”), KPMG Inc. (“**KPMG**”) was appointed as receiver and manager (the “**Southmount Et Al. Receiver**”) pursuant to an order (the “**Southmount Et Al. Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended, and section 101 of the Courts of Justice Act R.S.O. 1990 c. C. 43, as amended, without security, of all of the assets, undertakings and properties, including the real property described in Schedule “A” to the Southmount Et Al. Appointment Order (the “**Southmount Et Al. Real Property**”) of (i) Southmount Healthcare Centre Inc. (“**Southmount**”), 180 Vine Inc. (“**Vine**”), 2478658 Ontario Ltd. (“**247 Ontario**”), 2009 Long Lake Holdings Inc. (“**Long Lake**”), 65 Larch Holdings Inc. (“**65 Larch**”), 100 Colborne Holdings Inc. (“**100 Colborne**”), and 240 Old Penetanguish Holdings Inc. (“**240 Penetang**” and collectively, the “**Southmount Et Al. Legal Owners**”) acquired for, or used in relation to the Southmount Et Al. Legal Owners’ business, including any interest held by Vine to which His Majesty the King in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable Southmount Et Al. Real Property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Southmount Et Al. Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc. (“**Vine Purchaser Co.**”), Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Southmount Et Al. Beneficial Owners**”, and together with the Southmount Et Al. Legal Owners, the “**Southmount Et Al. Debtors**”) but solely in respect of all of the Southmount Et Al. Beneficial Owners’ right, title and interest in and to the Southmount Et Al. Legal Owners’ Property, including the Southmount Et Al. Real Property and all proceeds thereof, whether held directly or indirectly by the Southmount Et Al. Beneficial Owners for themselves or for others (collectively and together with the Southmount Et Al. Legal Owners’ Property, the “**Southmount Et Al. Property**”).
2. A copy of the Southmount Et Al. Appointment Order is attached hereto as Appendix “A”.
3. On August 3, 2021, upon application by American General Life Insurance Company, and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the “**Victoria Applicants**”), KPMG was appointed as receiver and manager (the “**Victoria Receiver**”, and together with the Southmount Et Al. Receiver, the “**Receivers**”), pursuant to an order (the “**Victoria Appointment Order**”) of the Court under section 243(1) of the BIA, and section 101 of the Courts of Justice Act R.S.O. 1990 c. C.

43, as amended, of (i) all of the assets, undertakings and properties, including the Victoria Real Properties (as defined in the Victoria Appointment Order) of Victoria Avenue North Holdings Inc. (“**Victoria Avenue**”) acquired for, or used in relation to Victoria Avenue’s business (collectively, the “**Victoria Avenue Property**”), and (ii) all right, title and interest of any beneficial owners (the “**Victoria Beneficial Owners**”) in and to the Victoria Avenue Property and all proceeds thereof, whether held directly or indirectly by the Victoria Beneficial Owners for themselves or for others (collectively, and together with the Victoria Avenue Property, the “**Victoria Property**”).

4. A copy of the Victoria Appointment Order is attached hereto as Appendix “B”.
5. The Victoria Property primarily comprised the real property assets consisting of two (2) medical office buildings, located at 304 Victoria Avenue North in Hamilton, Ontario (the “**304 Victoria Building**”) and 414 Victoria Avenue North in Hamilton, Ontario (the “**414 Victoria Building**”) and together with the 304 Victoria Building, the “**Victoria Buildings**”) and their related real property leases (collectively, the “**Victoria Real Property Assets**”).
6. The primary assets of the Southmount Et Al. Legal Owners were seven (7) medical office buildings in the same asset class as the Victoria Buildings and one adjacent parking lot (collectively, and with their related real property leases, the “**Southmount Et Al. Real Property Assets**”).
7. Victoria Avenue is affiliated with the Southmount Et Al. Legal Owners, and they are all indirect subsidiaries of Gross Capital Inc. (“**Gross Capital**”). Gross Capital was assigned into bankruptcy on June 25, 2021. KPMG is not the trustee in bankruptcy of Gross Capital.
8. The Receivers understand that historically the Southmount Et Al. Legal Owners and Victoria Avenue were each managed by representatives of Gross Capital. As a result, the Receivers have been reliant upon books and records maintained by Gross Capital to obtain information regarding the Southmount Et Al. Real Property Assets, the Victoria Real Property Assets and the business and affairs of Victoria Avenue and the Southmount Et Al. Legal Owners for the period prior to the appointment of the Receivers.

#### *Southmount Et Al. Proceedings*

9. As set out in greater detail below, through a court-approved sale process, interest in purchasing the Southmount Et Al. Real Property Assets was solicited by the Southmount Et Al. Receiver and its

broker. This process resulted in a sale of all of the Southmount Et Al. Real Property Assets and a distribution of all proceeds of those sales to the Southmount Et Al. Applicants, aside from certain reserves maintained by the Southmount Et Al. Receiver. All but one of the Southmount Et Al. Legal Owners have been assigned into bankruptcy.

10. On October 29, 2021, the Court granted an order (the “**Southmount Et Al. Sale Process Order**”) in those receivership proceedings (the “**Southmount Et Al. Proceedings**”) approving, among other things:
  - (a) the broker listing agreement dated October 20, 2021, and the engagement of CBRE Limited (“**CBRE**”) as exclusive real estate broker for the Southmount Et Al. Real Property Assets; and
  - (b) a sale process for the Southmount Et Al. Real Property Assets, as appended to the Southmount Et Al. Sale Process Order.
  
11. At a hearing before the Court on May 24, 2022 (the “**May 24 Hearing**”), the Court granted five (5) approval and vesting orders in the Southmount Et Al. Proceedings (collectively, the “**Southmount Et Al. May 24 AVOs**”), each, among other things:
  - (a) approving sale transactions (the “**Southmount Et Al. May 24 Transactions**”) in respect of certain of the Southmount Et Al. Real Property Assets, and authorizing and directing the Southmount Et Al. Receiver to take such steps as necessary to complete same; and
  - (b) vesting title in and to the applicable Southmount Et Al. Real Property Assets in each applicable purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances, upon the Southmount Et Al. Receiver delivering a certificate confirming, among other things, completion of each of the Southmount Et Al. May 24 Transactions.
  
12. Also at the May 24 Hearing, the Court granted an order in the Southmount Et Al. Proceedings (the “**Southmount Et Al. May 24 Distribution & Ancillary Relief Order**”), among other things:
  - (a) authorizing and directing the Southmount Et Al. Receiver to pay the brokerage commissions in connection with the Southmount Et Al. May 24 Transactions upon closing thereof;

- (b) authorizing the Southmount Et Al. Receiver to:
  - (i) repay the Southmount Et Al. Receiver's borrowings owing to the Southmount Et Al. Applicants pursuant to a term sheet dated June 18, 2021 (the "**Southmount Et Al. Receiver Term Sheet**"); and
  - (ii) make one or more distributions to the Southmount Et Al. Applicants from the net proceeds of the Southmount Et Al. May 24 Transactions and any other funds in the possession of the Southmount Et Al. Receiver, less a reserve to be determined and held back by the Southmount Et Al. Receiver to fund, among other things, the costs of the Southmount Et Al. Proceedings and ongoing operating expenses.
- 13. Two of the transactions approved at the May 24 Hearing did not close. The remaining three transactions approved at the May 24 Hearing did proceed to close.
- 14. At a hearing before the Court on July 15, 2022 (the "**July 15 Hearing**"), the Court granted four (4) approval and vesting orders in the Southmount Et Al. Proceedings (collectively, the "**Southmount Et Al. July 15 AVOs**"), each, among other things:
  - (a) approving sale transactions (the "**Southmount Et Al. July 15 Transactions**", and together with those Southmount Et Al. May 24 Transactions which were ultimately completed, the "**Southmount Et Al. Transactions**") in respect of certain of the Southmount Et Al. Real Property Assets, and authorizing and directing the Southmount Et Al. Receiver to take such steps as necessary to complete same; and
  - (b) vesting title in and to the applicable Southmount Et Al. Real Property Assets in each applicable purchaser, free and clear of all liens, claims and encumbrances, except certain permitted encumbrances, upon the Southmount Et Al. Receiver delivering a certificate confirming, among other things, completion of each of the Southmount Et Al. July 15 Transactions.
- 15. Also at the July 15 Hearing, the Court granted an order in the Southmount Et Al. Proceedings (the "**Southmount Et Al. July 15 Distribution & Ancillary Relief Order**", and together with the Southmount Et Al. May 24 Distribution & Ancillary Relief Order, the "**Southmount Et Al. Distribution & Ancillary Relief Orders**"), among other things:

- (a) authorizing and directing the Southmount Et Al. Receiver to pay the brokerage commissions in connection with the Southmount Et Al. July 15 Transactions upon closing thereof; and
  - (b) authorizing the Southmount Et Al. Receiver to make one or more distributions to the Southmount Et Al. Applicants from the net proceeds of the Southmount Et Al. July 15 Transactions and any other funds in the possession of the Southmount Et Al. Receiver, less a reserve to be determined and held back by the Southmount Et Al. Receiver to fund, among other things, the costs of the Southmount Et Al. Proceedings and ongoing operating expenses.
16. The transactions approved at the July 15 Hearing have now closed. As a result, all of the Southmount Et Al. Properties have been sold and distributions have been made.
17. Copies of the Southmount Et Al. May 24 Distribution & Ancillary Relief Order and the Southmount Et Al. July 15 Distribution & Ancillary Relief Order, are attached hereto as Appendix “C”.

*Victoria Proceedings*

18. As set out in greater detail below, through a court-approved sale process, interest in the Victoria Real Property Assets was solicited by the Victoria Receiver and CBRE. This process resulted in a sale of one building included in the Victoria Real Property Assets. The remaining building that is included in the Victoria Real Property Assets remains to be sold at this time.
19. On October 29, 2021, the Court granted an order (the “**Victoria Sale Process Order**”) in those proceedings (the “**Victoria Proceedings**” and, together with the Southmount Et Al. Proceedings, the “**Receivership Proceedings**”) approving, among other things:
- (a) the broker listing agreement dated October 20, 2021, and the engagement of CBRE as exclusive real estate broker for the Victoria Real Property Assets; and
  - (b) a sale process for the Victoria Real Property Assets, as appended to the Victoria Sale Process Order in the Victoria Proceedings.
20. The Victoria Real Property Assets were marketed alongside the Southmount Et Al. Real Property Assets.



21. At the May 24 Hearing, the Court granted an approval and vesting order in the Victoria Proceedings (the “**Victoria May 24 AVO**”), among other things, approving a sale transaction (the “**Victoria May 24 Transaction**”) in respect of the Victoria Real Property Assets, and authorizing and directing the Victoria Receiver to take such steps as necessary to complete same.
22. Also at the May 24 Hearing, the Court granted an order in the Victoria Proceedings (the “**Victoria May 24 Distribution & Ancillary Relief Order**”), among other things:
  - (a) authorizing and directing the Victoria Receiver to pay CBRE its brokerage commission in connection with the Victoria May 24 Transaction, upon closing thereof;
  - (b) authorizing the Victoria Receiver to:
    - (i) repay the indebtedness owing to the Victoria Applicants pursuant to the Victoria Receiver Term Sheet from the net proceeds of the Victoria May 24 Transaction and any other funds in the possession of the Victoria Receiver; and
    - (ii) make one or more distributions to the Victoria Applicants from the net proceeds of the Victoria May 24 Transaction and any other funds in the possession of the Victoria Receiver, less a reserve to be determined and held back by the Victoria Receiver to fund, among other things, the costs of the Victoria Proceedings and ongoing operating expenses.
23. The Victoria May 24 Transaction did not proceed to closing.
24. At a hearing before the Court on October 14, 2022 (the “**October 14 Hearing**”), the Court granted an approval and vesting order in the Victoria Proceedings, among other things, approving a sale transaction (the “**304 Victoria Transaction**”) in respect of the 304 Victoria Building and its related real property leases (the “**304 Victoria Real Property Assets**”) and authorizing and directing the Victoria Receiver to take such steps as necessary to complete same.
25. Also at the October 14 Hearing, the Court granted an order in the Victoria Proceedings (the “**Victoria October 14 Distribution & Ancillary Relief Order**”), among other things:
  - (a) authorizing and directing the Victoria Receiver to pay CBRE its brokerage commission in connection with the 304 Victoria Transaction, upon closing thereof; and

- (b) authorizing the Victoria Receiver to repay borrowings owing to the Victoria Applicants pursuant to the Victoria Receiver Term Sheet from the net proceeds of the 304 Victoria Transaction and any other funds in the possession of the Victoria Receiver.
26. Copies of the Victoria May 24 Distribution & Ancillary Relief Order and the Victoria October 14 Distribution & Ancillary Relief Order are attached as Appendix “D”.

*Notice Protocol for Victoria*

27. At the commencement of the Victoria Proceedings, a number of parties who may assert a beneficial interest in the Victoria Real Property Assets were identified to the Victoria Receiver.
28. The Victoria Receiver’s knowledge of the identities and contact information of the Victoria Beneficial Owners is based primarily on a nominee agreement dated March 30, 2015, a nominee acknowledgement dated March 30, 2015 signed by each of the Victoria Beneficial Owners and an unsigned amended and restated nominee agreement dated March 16, 2018.
29. In order to bring the Victoria Proceedings to the attention of those who may have an interest including the Victoria Beneficial Owners among others, the Victoria Receiver sought and obtain an order on September 14, 2021 (the “**Victoria Beneficial Owner Notification & Service Order**”) authorizing and directing the Victoria Receiver to undertake a notification and service protocol in respect of the Victoria Beneficial Owners, effective as of September 24, 2021.
30. The procedures set out in the Victoria Beneficial Owner Notification & Service Order have been followed by the Victoria Receiver.

**II. PURPOSE OF REPORT**

31. The purpose of this joint report of the Receivers (the “**Responding Report**”) is to provide the Court with information pertaining to the following:
- (a) the status of the Southmount Et Al. Proceedings and the Victoria Proceedings;
  - (b) the motion returnable February 8, 2023 brought by Yuchuan Shao, Sanlin Shao, Jun Xing, and Jianzhong Xing (the “**Moving Parties**”) to lift the stay of proceedings (the “**Lift Stay Motion**”) as it relates to the Southmount Et Al. Proceedings, the Victoria Proceedings, and

bankruptcy proceedings of certain of the Southmount Et Al. Legal Owners, so that the Moving Parties can pursue the Action (as defined herein); and

- (c) the Receivers' views on, and proposed resolution in respect of, the Lift Stay Motion.

### **III. QUALIFICATIONS & TERMS OF REFERENCE**

32. In preparing this Responding Report and making the comments herein, the Receivers have been provided with, or have relied upon certain unaudited, draft, and/or internal financial information, the Southmount Et Al. Legal Owners' and Victoria Avenue's records and financial information and information from other third-party sources (collectively, the "**Information**"). The Receivers have reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. The Receivers have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook, and accordingly, the Receivers express no opinion or other form of assurance in respect of the Information.
33. Some of the Information referred to in this Responding Report consists of financial forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
34. Certain Information referred to in this Responding Report is based on estimates and assumptions. Such estimates and assumptions are, by their nature, not ascertainable and, as a consequence, no assurance can be provided regarding the forecasted or projected results. The reader is cautioned that the actual results will likely vary from the forecasts or projections, even if the assumptions materialize, and the variations could be significant.
35. The Receivers have prepared this Responding Report in connection with the Lift Stay Motion. This Responding Report should not be relied on for other purposes, including but not limited to, by any prospective purchaser in any transaction with the Receivers.
36. Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

### **IV. STATUS OF THE PROCEEDINGS**

37. All of the Southmount Et Al. Real Property Assets have been sold pursuant to the Southmount Et Al. Transactions, and all net proceeds of same have been distributed by the Southmount Et Al. Receiver

to the Southmount Et Al. Applicants (as further detailed below, net of a reserve, primarily for the remaining costs of administration), pursuant to the Southmount Et Al. Distribution & Ancillary Relief Orders.

The Southmount Et Al. Receiver filed an assignment in bankruptcy on behalf of each of Southmount, Vine Purchaser Co., Long Lake, 65 Larch, 240 Penetang, 100 Colborne and 247 Ontario.

38. The 304 Victoria Real Property Assets have been sold pursuant to the 304 Victoria Transaction, which was completed on December 6, 2022. Pursuant to the Victoria October 14 Distribution & Ancillary Relief Order, the Victoria Receiver's borrowings have been repaid from net proceeds of the 304 Victoria Transaction.
39. The Victoria Receiver continues to market the 414 Victoria Building for sale, in conjunction with CBRE.

## V. SECURITY OPINION

40. The Southmount Et Al. Receiver and the Victoria Receiver have each obtained an independent legal opinion from their independent counsel, Norton Rose Fulbright Canada LLP ("**Independent Counsel**"), with respect to the validity and enforceability of the security granted in favour of the Southmount Et Al. Applicants and the Victoria Applicants under the laws of the Province of Ontario (the "**Norton Rose Opinions**").
41. The Norton Rose Opinions concluded (subject to the qualifications, assumptions and limitations included therein), among other things:
  - (a) that the security of the Southmount Et Al. Applicants is valid and enforceable against all of the Southmount Et Al. Property (including the Southmount Et Al. Real Property Assets) and that first in time registrations of the Southmount Et Al. Applicants' security have been made against all of the Southmount Et Al. Property (including the Southmount Et Al. Real Property Assets); and
  - (b) that the security of the Victoria Applicants is valid and enforceable against all of the Victoria Property (including the Victoria Real Property Assets) and that first in time registrations of the Victoria Applicants' security have been made against all of the Victoria Property (including the Victoria Real Property Assets).

42. Copies of the Norton Rose Opinions will be made available to stakeholders on appropriate arrangements regarding confidentiality, reliance and privilege.

## VI. DISTRIBUTIONS

### *Southmount Et Al. Applicants' Secured Debt*

43. The balance of the Southmount Et Al. Applicants' secured debt (the "**Southmount Et Al. Debt**", which excludes the Southmount Et Al. Receiver's borrowings) was estimated to be approximately \$70.0 million as at June 30, 2022, including principal, accrued interest, and other costs added to the Southmount Et Al. Debt, plus additional accrued interest, costs and other amounts that may be claimable in connection therewith, including yield maintenance amounts.
44. The Affidavit of a representative of the Southmount Et Al. Applicants, sworn June 18, 2021 in connection with the commencement of the Southmount Et Al. Proceedings, states that:
- On January 25, 2016, the Applicants advanced a loan (the "Loan") to the [Southmount Et Al. Legal Owners] in the principal amount of \$70,000,000 to (i) fund the acquisition of four medical office buildings and one parking lot (which comprise the [Southmount Et Al. Real Property Assets]) by certain of the [Southmount Et Al. Legal Owners], and (ii) refinance three medical office buildings (which comprise the [Southmount Et Al. Real Property Assets]) then owned by the [Southmount Et Al. Legal Owners].
45. This evidence is consistent with the closing documentation reviewed by the Southmount Et Al. Receiver, and the Receiver is not aware of any disagreement regarding this evidence.
46. Pursuant to the Southmount Et Al. Distribution & Ancillary Relief Orders, the Southmount Et Al. Receiver was authorized to make one or more distributions to the Applicants from the net sale proceeds of the Southmount Et Al. Transactions and other cash available, subject to a reserve to be retained by the Southmount Et Al. Receiver. As at the date of this Responding Report, the Southmount Et Al. Receiver has made three (3) distributions in the amount of approximately \$49.2 million (in aggregate) to the Southmount Et Al. Applicants.
47. As at December 31, 2022, the Southmount Et Al. Receiver had a reserve of cash on hand of approximately \$0.9 million, to fund, among other things:
- (a) accrued and unpaid obligations incurred in the Southmount Et Al. Proceedings;
  - (b) the estimated costs to complete the administration of the Southmount Et Al. Proceedings;

- (c) estimated remaining bankruptcy administration costs to be funded to the bankruptcy trustee; and
  - (d) an amount sufficient to satisfy any claim of Enersavings Inc. (up to \$160,252) in respect a potential construction lien, should such claim rank in priority to the Southmount Et Al. Debt.
48. There will not be sufficient proceeds from the Southmount Et Al. Real Properties to fully repay the principal and interest owing to the Southmount Et Al. Applicants, or any additional amounts that may be owing under Southmount Et Al. Debt.

*Victoria Applicants' Secured Debt*

49. The balance of the Victoria Applicants' secured debt (the "**Victoria Debt**", which excludes the Victoria Receiver's borrowings) was estimated to be approximately \$24.1 million as at June 30, 2022, including principal, accrued interest, and other costs added to the Victoria Debt, plus additional accrued interest, costs and other amounts that may be claimable in connection therewith, including yield maintenance amounts.
50. The Affidavit of a representative of the Victoria Applicants, sworn July 9, 2021 in connection with the commencement of the Victoria Proceedings, states that:
- On March 30, 2015, the [Victoria Applicants] advanced a loan (the "Loan") to [Victoria Avenue] in the principal amount of \$24,500,000 to fund the acquisition of two medical office buildings (which comprise the Real Properties) by [Victoria Avenue].
51. This evidence is consistent with the closing documentation reviewed by the Victoria Receiver, and the Receiver is not aware of any disagreement regarding this evidence.
52. Having regard to:
- (a) the balance of the Victoria Debt;
  - (b) the proceeds generated by the 304 Victoria Transaction; and
  - (c) the indications of value for the 414 Victoria Real Property Assets,

the Victoria Receiver does not expect that the recoveries on these assets will be sufficient to fully repay the principal and interest owing to the Victoria Applicants, or any additional amounts that may be owing under the Victoria Debt.

## VII. NOTICE TO THE MOVING PARTIES

53. The Moving Parties received correspondence from the Receivers' Independent Counsel regarding the status of the Receivership Proceedings and the stay of proceedings in November 2021. A copy of the correspondence from Receivers' counsel to (then) counsel for the Moving Parties is attached hereto as Appendix "E". Independent Counsel for the Victoria Receiver followed up regarding the Moving Parties' intentions in connection with the stay of proceedings in January 2022. A copy of that email correspondence is attached as Appendix "F".
54. The Moving Parties did not engage with counsel to the Receivers at that time. Nonetheless, (then) counsel to the Moving Parties was added to a supplemental notice list and served with Motion Materials in connection with the relief sought by the Receivers at hearings on May 24, 2022 and July 15, 2022, including authorization for the Receiver to make distributions of net sale proceeds to the Southmount Et Al. Applicants and Victoria Applicants. The Moving Parties did not oppose any of the relief sought at those hearings.

## VIII. LIFT STAY MOTION

55. The Moving Parties filed the Lift Stay Motion for an order, among other things, directing that the stays of proceedings granted in various proceedings including the Gross Capital Inc. bankruptcy and the Receivership Proceedings, shall no longer operate in respect of an action (the "**Action**") by the Moving Parties against various parties, including the respondent entities in the Receivership Proceedings.
56. The Action is based upon certain alleged false representations by Sheldon Gross and Mark Gross (former principals of Gross Capital) that allegedly induced the Moving Parties to invest in certain entities affiliated with Gross Capital. The Receivers do not believe that the Moving Parties allege they made any investment directly into any of the Southmount Et Al. Legal Owners or Victoria Avenue. The Action seeks, among other things, an equitable mortgage over certain properties, an order to trace any of the funds invested by the Moving Parties indirectly into the Southmount Et Al. Legal Owners or Victoria Avenue, and a constructive trust over assets of the Southmount Et Al. Legal Owners or Victoria Avenue.
57. The Receivers do not believe it would be appropriate to lift the stay of proceedings to permit the Moving Parties to pursue the Action against any property of the respondents in the Receivership Proceedings, for the following reasons:

- (a) the Southmount Et Al. Applicants and Victoria Applicants have first ranking and validly perfected security interests in the assets subject to those Receivership Proceedings and this Court has already approved distributions to the Southmount Et Al. Applicants and Victoria Applicants on notice to and without the objection of the Moving Parties.
  - (b) even if the Moving Parties were successful in their claim, no funds remain available for distribution from the Southmount Et Al. Proceedings following the court approved distributions that have been made to the Southmount Et Al. Applicants, being the senior secured and fulcrum creditors. In addition, the assets in the Victoria Proceedings appear to be similarly fully encumbered by existing mortgages by the senior secured lenders.
  - (c) if unencumbered assets were to become available for distribution to creditors in the Southmount Et Al. Proceedings or the Victoria Proceedings (which will not occur in the Southmount Et Al. Proceedings and is expected not to occur in the Victoria Proceedings), a claims process would need to be established *within those proceedings or in a subsequent bankruptcy* to have *all claims* to those assets adjudicated and determined in a centralized and efficient forum. This would include any claims that may be asserted by the large number of potential beneficial owners in the Victoria Proceedings. It is neither efficient nor consistent with insolvency practice in this jurisdiction to have individual claims of individual creditors proceed through a civil litigation process in parallel with a receivership proceeding. Such a practice, if adopted, would impose material costs and time delays on insolvency estates and their creditors. In these Receivership Proceedings, such a practice could open the door to a very large number of similar parallel claims by various potential creditors and beneficial owners in the face of no possibility of any recoveries to them given the senior and first ranking security interests of the Southmount Et Al. Applicants and Victoria Applicants. Further and in any event, the Receivers submit that to the extent any party wishes to assert any claims against the property subject to the Receivership Proceedings, they should do so within the context of the Receivership Proceedings and not through a separate action that avoids the insolvency process.
58. The Receivers should also note that they do not believe they are in possession of any information that would be relevant to the Action that is not also in the possession of other parties, including Gross Capital. Therefore, the Receivers do not believe that their participation in the litigation would provide material assistance relative to the cost of that participation.



59. As an alternative to the Moving Parties' requested relief on this Motion, the Receivers suggest the following procedure be adopted to not impede the Moving Parties' steps to pursue any other defendants while also protecting the integrity of the Receivership Proceedings and avoiding undue cost and delay (the "**Proposed Resolution Procedure**"):
- (a) the stays of proceedings in the Receivership Proceedings and any parallel bankruptcy proceedings would be lifted to the extent necessary to allow the Actions of the Moving Parties to be commenced and pursued as against the other defendants to the Action;
  - (b) in connection with the above lifting of the stays of proceedings, the Moving Parties would agree that:
    - (i) they will not require any document production, discovery or defence from the Receivers or the respondents in the Receivership Proceedings;
    - (ii) neither the Receiver nor the respondents in the Receivership Proceedings will be required to take any further step or action in connection with the Action;
  - (c) the Moving Parties are pursuing the respondents in the Receivership Proceedings solely for the purpose of obtaining judgment and establishing liability that could be enforced against any other defendants who are not respondents in the Receivership Proceedings; and
  - (d) the Moving Parties will not seek to take any enforcement steps against the property that is subject to the Receivership Proceedings, which assets appear to already be fully encumbered at this time.

#### **IX. RECEIVER'S CONCLUSION**

60. Based on the forgoing, the Receivers respectfully request that the Moving Parties motion be dismissed or, in the alternative, that the Proposed Resolution Procedure be approved.

All of which is respectfully submitted this 23<sup>rd</sup> day of January, 2023.

**KPMG Inc.**

**In its capacities as Receiver of**

**Southmount Healthcare Centre Inc.**

**180 Vine Inc.**

**2478658 Ontario Ltd.,**

**2009 Long Lake Holdings Inc.**

**65 Larch Holdings Inc.**

**100 Colborne Holdings Inc.**

**240 Old Penetanguish Holdings Inc.**

**Gross Properties Inc.**

**180 Vine Purchaser Inc.**

**2413667 Ontario Inc.**

**And as Receiver of**

**Victoria Avenue Holdings Inc.**

**And not in its personal or corporate capacity**

Per:



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**Katherine Forbes**  
**CPA, CA, CIRP, LIT**  
Senior Vice-President



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**George Bourikas**  
**CPA, CA, CIRP, LIT**  
Vice President

## **APPENDIX “A”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) TUESDAY, THE 29<sup>TH</sup> DAY  
JUSTICE DUNPHY ) OF JUNE, 2021

B E T W E E N:



AMERICAN GENERAL LIFE INSURANCE COMPANY,  
LEXINGTON INSURANCE COMPANY, AND  
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658  
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH  
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD  
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE  
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by American General Life Insurance Company, Lexington Insurance Company, and The Variable Annuity Life Insurance Company (collectively, the "**Applicants**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KPMG Inc. ("**KPMG**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including the real property described in Schedule "A" (the "**Real Property**") of

Southmount Healthcare Centre Inc., 180 Vine Inc. (“**Vine**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine to which the Crown may have rights and any interest in the applicable Real Property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**” and together with the Legal Owners, the “**Debtors**”) but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owners’ Property, the “**Property**”), was heard this day by judicial videoconference via Zoom in Toronto, Ontario due to the COVID-19 pandemic.

**ON READING** the affidavit of Jacob Baron sworn June 18, 2021 (the “**Baron Affidavit**”) and the Exhibits thereto and on hearing the submissions of counsel for the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Nancy Thompson sworn June 24, 2021 and on reading the consent of KPMG to act as the Receiver,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and the method of service validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the Property.

## **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality

of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Legal Owners, including the power to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Legal Owners;
- (d) to engage property managers, consultants, contractors, appraisers, agents, brokers, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time (each, a "**Professional Advisor**") and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicants to advise and represent it save and except on matters upon which the Receiver in its judgment, determines it requires independent advice, in which case the Receiver shall retain independent counsel;
- (e) to consult with the Applicants and any other creditors of, or parties with an interest in, the Legal Owners and the Beneficial Owners or the Property from time to time and to provide such information to the Applicants and any such other creditors or interested

parties of the Legal Owners and the Beneficial Owners or the Property as may be reasonably requested, including pursuant to the Receiver Term Sheet;

- (f) to pay the retainer, fees and disbursements of any Professional Advisor retained by the Receiver in connection with or in relation to this application, whether incurred prior to or after the date of this Order, in each case at their standard rates and charges;
- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Legal Owners or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to (i) the Legal Owners, including, but not limited to, all rents (whether deferred or otherwise) and to exercise all remedies of the Legal Owners in collecting such monies, including, without limitation, to enforce any security held by the Legal Owners, or (ii) the Beneficial Owners on account of the Beneficial Owners' Property and 180 Vine Purchaser Inc. on account of the applicable Real Property conveyed to it by the Crown, and to exercise all remedies of the Beneficial Owners in collecting such monies, including, without limitation, to enforce any security held by the Beneficial Owners;
- (i) to settle, extend or compromise any indebtedness owing to the Legal Owners;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Legal Owners, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to file an assignment in bankruptcy on behalf of the Legal Owners, or to consent to the making of a bankruptcy order against the Legal Owners;

- (m) to market any or all of the Property for sale or lease, including advertising and soliciting offers in respect of the Property and any part or parts thereof, and/or soliciting engagement proposals by brokers, listing agents or leasing agents and negotiating such terms and conditions of such sale, lease or engagement as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;



- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Legal Owners;
- (s) to apply for any relief under the Canadian Emergency Rent Assistance Program or any other governmental aid or relief program in the name of the Legal Owners, if thought desirable by the Receiver;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Legal Owners, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Legal Owners;
- (u) to exercise any shareholder, partnership, joint venture or other rights which the Legal Owners may have, or which the Beneficial Owners may have in respect of the Property; and
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- (w) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, property managers, including, without limitation, Prime Real Estate Group Inc. and Fausto Carnicelli, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) Gross Capital Inc. ("**Gross Capital**"), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, including, for greater certainty, all rents or security deposits held by third parties for (i) the Legal Owners, and/or (ii) the Beneficial Owners in respect of the Property (collectively, the

“**Deposits**”), and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, lease agreements, rent rolls, rent deferral agreements or documentation, securities, contracts, orders, corporate and accounting records, Deposits, and any other papers, records and information of any kind related to the Property, or to the business or affairs of the Legal Owners, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records located at the offices of Gross Capital at the expense of the Receiver and Gross Capital shall cooperate and provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE LEGAL OWNERS OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Legal Owners or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Legal Owners or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Legal Owners, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Legal Owners to carry on any business which the Legal Owners are not lawfully entitled to carry on, (ii) exempt the Receiver or the Legal Owners from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Legal Owners, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Legal Owners or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, property maintenance or management services, utility or other services to the Legal Owners are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Legal Owners' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Legal Owners or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property or rents derived from any or all of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

13. **THIS COURT ORDERS** that any employees of the Legal Owners shall be deemed to have been terminated by the Legal Owners immediately prior to the issuance of this Order. The Receiver shall not engage any employees of the Legal Owners as its employees and shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided

for in section 14.06(1.2) of the BIA, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

14. **THIS COURT ORDERS** that the Receiver is expressly authorized and empowered to send notices of the terminations (if any) provided for in paragraph 13 of this Order to the applicable employees of the Legal Owners (if any) in the name of and on behalf of the Legal Owners and to do or cause to be done all such further acts and things necessary or desirable in respect of the termination of such employees, including, without limitation, any applicable statutory notices or filings in the name of and on behalf of the Legal Owners.

#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,

the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver (including any independent counsel) shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel (including any independent counsel) shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel (including any independent counsel), and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicants pursuant to the Receiver Term Sheet, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$750,000 (or such greater amount as this Court may by further Order authorize) at any time, in accordance with the Receiver Term Sheet, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: home.kpmg/ca/SouthmountEtAl.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the Legal Owners' creditors, the Beneficial Owners or other interested parties at their respective addresses as last shown on the records of the Legal Owners and that any such service or distribution by courier, personal delivery, facsimile or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

27. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver are at liberty to serve or distribute this Order and any other materials and Orders as may be reasonably required in these proceedings, including any notices, court materials, or other correspondence, by forwarding true copies thereof by electronic message to the Legal Owners' creditors, the Beneficial Owners or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).



**GENERAL**

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicants shall have their costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to read "S. F. Dunphy, J.", is written over a horizontal line. The signature is stylized and somewhat illegible due to its cursive nature. Below the signature, the text "S. F. Dunphy, J." is printed in a simple, sans-serif font.

## **SCHEDULE "A"**

### **"Real Property"**

**Municipal Address:** 35 Upper Centennial Parkway, Hamilton

**Legal Descriptions:** PIN 17088-0748(LT): PT LT 25, CON 8 SALTFLEET, PART 7, PLAN 62R-18917; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PT LT 25, CON 8 SALTFLEET, PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON; and

PIN 17088-0762(LT): PT LT 25 CON 8 SALTFLEET BEING PARTS 1, 2, 3, 4, 5 AND 10 ON 62R18917; S/T AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PARTS 1-5 INCL, 12-15 INCL, 18, 21, 30, 31, 32, 36, 38, 42, 48, 53 ON 62R14684 AS IN LT562193; T/W AN EASEMENT OVER PARTS 2, 4, 14, 21, 30, 31, 32, 36, 38, 48 ON 62R14684 AS IN LT562194; SUBJECT TO AN EASEMENT OVER PART 5 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 10 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 2 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; SUBJECT TO AN EASEMENT OVER PART 3 ON 62R18917 IN FAVOUR OF PT LT 25 CON 8 SALTFLEET BEING PARTS 3, 5, 6 ON 62R18292 AND PARTS 9, 10, 11, 39, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 ON 62R14684 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 10 ON 62R18917 AS IN WE749696; STONEY CREEK; TOGETHER WITH AN EASEMENT OVER PARTS 9, 11, 12 AND 13 ON 62R18917 AS IN WE749696; CITY OF HAMILTON

**Municipal Address:** 240 Old Penetang Road North, Midland

**Legal Description:** PIN 58454-0029(LT): PT E1/2 LT 106 CON 1 WPR TINY; PT LT 107 CON 1 WPR TINY PT 3 & 4, 51R18477 & PT 4, 5, 6, 7 & 10 R1026 EXCEPT 51R3985; T/W & S/T RO1045345; MIDLAND

**Municipal Address:** 100 Colborne Street West, Orillia

**Legal Description:** PIN 58650-0115(LT): PT LT 10-15, 17 BLK C PL 228 ORILLIA PT 3, 4 & 5, 51R10372; ORILLIA

**Municipal Address:** 77 Wyandotte Street, Orillia

**Legal Description:** PIN 58644-0014(LT): LT 16 BLK G PL 228 ORILLIA; PT LT 15 BLK G PL 228 ORILLIA AS IN RO1453448; ORILLIA

**Municipal Address:** 849 Alexander Court, Peterborough

**Legal Description:** PIN 28061-0157(LT):PT LTS 3 & 4, PL 23Q, PART 1&2, 45R647, NORTH MONAGHAN; PETERBOROUGH

**Municipal Address:** 65 Larch Street, Sudbury

**Legal Descriptions:** PIN 73584-0077(LT): LT 23 BLK A PL 3SA MCKIM; GREATER SUDBURY; and

PIN 73584-0078(LT): LT 20-22 BLK A PL 3SA MCKIM; GREATER SUDBURY; and

PIN 73584-0097(LT): PT N1/2 LT 5 CON 3 MCKIM AS IN S81426 (SECONDLY & THIRDLY); GREATER SUDBURY

**Municipal Address:** 2009 Long Lake Road, Sudbury

**Legal Descriptions:** PIN 73595-0102(LT): PCL 8259 SEC SES; PT LT 6 CON 1 MCKIM EXCEPT LT52588, LT53059, LT109847, PT 7 53R4520 & PT 4 53R13501; S/T LT25019; GREATER SUDBURY; and

PIN 73595-0174(LT): PCL 39445 SEC SES; PT LT 6 CON 1 MCKIM PT 3 TO 7 & 12 TO 15 53R5036; PT LT 6 CON 1 MCKIM PT 5 53R13501; S/T PT 2 & 3 53R13501 AS IN LT717184; S/T LT25019, LT735739; GREATER SUDBURY; and

PIN 73595-0333 (LT): PCL 39000 SEC SES; PT LT 6 CON 1 MCKIM PT 9 TO 11 53R5036; T/W A ROW OVER PT 1 & 2 53R5036; S/T LT25019; GREATER SUDBURY

**Municipal Address:** 180 Vine Street South, St. Catharines

**Legal Description:** PIN 46272-0086 (LT): PT LT 7, 9-10 BLK D CY PL 46 GRANTHAM; PT BLK A CY PL 79 GRANTHAM; PT BLK A, B CY PL 80 GRANTHAM; PT UNNAMED ST CY PL 46 GRANTHAM , CLOSED BY RO407053, PT 1 30R2209 EXCEPT PT 1 30R3734, PT 1 30R6493, & PT 1 30R7456; CITY OF ST. CATHARINES

**SCHEDULE "B"**

**RECEIVER'S CERTIFICATE**

**CERTIFICATE NO.** \_\_\_\_\_

**AMOUNT \$** \_\_\_\_\_

1. **THIS IS TO CERTIFY** that KPMG Inc., the receiver (the "**Receiver**") of (i) all of the assets, undertakings and properties, including the real property described in Schedule "A" (the "**Real Property**") to the Order (defined below) of Southmount Healthcare Centre Inc., 180 Vine Inc. ("**Vine**"), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the "**Legal Owners**") acquired for, or used in relation to the Legal Owners' business, including any interest held by Vine to which the Crown may have rights and any interest in the applicable Real Property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the "**Legal Owners' Property**"), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the "**Beneficial Owners**" and together with the Legal Owners, the "**Debtors**") but solely in respect of all of the Beneficial Owners' right, title and interest in and to Legal Owners' Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (collectively, the "**Beneficial Owners' Property**" and together with the Legal Owners' Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 29<sup>th</sup> day of June, 2021 (the "**Order**") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated in accordance with the Receiver Term Sheet (as defined in the Affidavit of Jacob Baron sworn June 18, 2021).

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2021.

**KPMG INC.**, solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

AMERICAN GENERAL LIFE INSURANCY COMPANY *et al.* - and -  
Applicants

SOUTHMOUNT HEALTHCARE CENTRE INC. *et al.*  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**ORDER  
(Appointing Receiver)**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
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Suite 4000, Commerce Court West  
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Lawyers for the Applicants

## **APPENDIX “B”**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. ) TUESDAY, THE 3<sup>RD</sup> DAY  
 )  
JUSTICE KOEHNEN ) OF AUGUST, 2021

B E T W E E N:

AMERICAN GENERAL LIFE INSURANCE COMPANY and  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Applicants

- and -

VICTORIA AVENUE NORTH HOLDINGS INC.  
and THE PARTIES LISTED ON SCHEDULE "A"

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the "**Applicants**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KPMG Inc. ("**KPMG**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) all of the assets, undertakings and properties, including, without limitation, the properties with legal descriptions set out in Schedule "B" (the "**Real Properties**") of Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) all right, title and interest of any beneficial owners (the "**Beneficial Owners**" and together with



the Legal Owner, the “**Debtors**”) in and to the Legal Owner’s Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others, including the Beneficial Owners who are Respondents in these proceedings and are listed on Schedule “A” (collectively, the “**Beneficial Owners’ Property**” and together with the Legal Owner’s Property, the “**Property**”), proceeded by judicial videoconference due to the COVID-19 pandemic.

**ON READING** the Affidavit of Jacob Baron, sworn July 9, 2021 (the “**Baron Affidavit**”) and the pre-filing report of KPMG in its capacity as proposed Receiver dated July 26, 2021, and on hearing the submissions of counsel for the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Nancy Thompson sworn July 27, 2021 and on reading the consent of KPMG to act as the Receiver,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and the method of service validated pursuant to the Order of Justice Gilmore granted on July 12, 2021 (the “**Substituted Service Order**”) so that this application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KPMG is hereby appointed Receiver, without security, of all of the Property.

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable (provided that any disbursements made in connection therewith are made in accordance with the Receiver Term Sheet, as defined in the Baron Affidavit, unless otherwise ordered by the Court):

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Legal Owner, including the power to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Legal Owner;
- (d) to engage property managers, consultants, contractors, appraisers, agents, brokers, experts, auditors, accountants, managers, assistants, counsel and such other persons from time to time (each, a "**Professional Advisor**") and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order, and in this regard the Receiver is specifically authorized to retain counsel for the Applicants to advise and represent it save and except on matters upon which the Receiver in its judgment, determines it requires independent advice, in which case the Receiver shall retain independent counsel;
- (e) to consult with the Applicants and any other creditors of, or parties with an interest in, the Legal Owner and the Beneficial Owners or the Property from time to time and to provide such information to the Applicants and any such other creditors or interested parties of the Legal Owner and the Beneficial Owners or the Property as may be reasonably requested, including pursuant to the Receiver Term Sheet;
- (f) to pay the retainer, fees and disbursements of any Professional Advisor retained by the Receiver in connection with or in relation to this application, whether incurred prior to or after the date of this Order, in each case at their standard rates and charges;

- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Legal Owner or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to (i) the Legal Owner, including, but not limited to, all rents (whether deferred or otherwise) and to exercise all remedies of the Legal Owner in collecting such monies, including, without limitation, to enforce any security held by the Legal Owner, or (ii) the Beneficial Owners on account of the Beneficial Owners' Property and to exercise all remedies of the Beneficial Owners in collecting such monies, including, without limitation, to enforce any security held by the Beneficial Owners;
- (i) to settle, extend or compromise any indebtedness owing to the Legal Owner;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Legal Owner, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to file an assignment in bankruptcy on behalf of the Legal Owner, or to consent to the making of a bankruptcy order against the Legal Owner;
- (m) to market any or all of the Property for sale or lease, including advertising and soliciting offers in respect of the Property and any part or parts thereof, and/or soliciting engagement proposals by brokers, listing agents or leasing agents and negotiating such terms and conditions of such sale, lease or engagement as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Legal Owner;
- (s) to apply for any relief under the Canadian Emergency Rent Assistance Program or any other governmental aid or relief program in the name of the Legal Owner, if thought desirable by the Receiver;
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of the Legal Owner, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Legal Owner;

- (u) to exercise any shareholder, partnership, joint venture or other rights which the Legal Owner may have, or which the Beneficial Owners may have in respect of the Property; and
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, property managers, including, without limitation, Prime Real Estate Group Inc., employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) the trustee in bankruptcy of Gross Capital Inc. (the “**Gross Capital Trustee**”), and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, including, for greater certainty, all rents or security deposits held by third parties for (i) the Legal Owner, and/or (ii) the Beneficial Owners in respect of the Property (collectively, the “**Deposits**”), and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, lease agreements, rent rolls, rent deferral agreements or documentation, securities, contracts, orders, corporate and accounting records, Deposits, and any other papers, records and information of any kind related to the Property, or to the business or affairs of the Legal Owner, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that

nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records located at the offices of Gross Capital at the expense of the Receiver and the Gross Capital Trustee shall cooperate and provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### NO PROCEEDINGS AGAINST THE LEGAL OWNER OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Legal Owner or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of

the Legal Owner or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Legal Owner, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Legal Owner to carry on any business which the Legal Owner is not lawfully entitled to carry on, (ii) exempt the Receiver or the Legal Owner from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Legal Owner, without written consent of the Receiver or leave of this Court.

#### **CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Legal Owner or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, property maintenance or management services, utility or other services to the Legal Owner are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Legal Owner's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Legal Owner or such other practices as may be agreed upon by



the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property or rents derived from any or all of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. **THIS COURT ORDERS** that any employees of the Legal Owner shall be deemed to have been terminated by the Legal Owner immediately prior to the issuance of this Order. The Receiver shall not engage any employees of the Legal Owner as its employees and shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

14. **THIS COURT ORDERS** that the Receiver is expressly authorized and empowered to send notices of the terminations (if any) provided for in paragraph 13 of this Order to the applicable employees of the Legal Owner (if any) in the name of and on behalf of the Legal Owner and to do or cause to be done all such further acts and things necessary or desirable in respect of the termination of such employees, including, without limitation, any applicable statutory notices or filings in the name of and on behalf of the Legal Owner.

### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to

their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any

other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver (including any independent counsel) shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel (including any independent counsel) shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel (including any independent counsel), and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicants pursuant to the Receiver Term Sheet, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, in accordance with the Receiver Term Sheet, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The

whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "C" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://home.kpmg/ca/victoriaholdings>.

26. **THIS COURT ORDERS** that this Order and any other materials, notices or other correspondence in these proceedings can continue to be served upon the Original Beneficial

Owners and Other Potential Parties of Interest (as defined in the Baron Affidavit) in the same manner provided for service of this Application pursuant to the Substituted Service Order.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or electronic transmission to the Legal Owner's creditors, the Beneficial Owners or other interested parties at their respective addresses as last shown on the records of the Legal Owner and that any such service or distribution by courier, personal delivery, facsimile or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver are at liberty to serve or distribute this Order and any other materials and Orders as may be reasonably required in these proceedings, including any notices, court materials, or other correspondence, by forwarding true copies thereof by electronic message to the Legal Owner's creditors, the Beneficial Owners or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to

make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

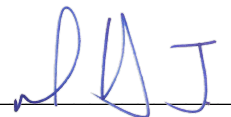
32. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. **THIS COURT ORDERS** that the Applicants shall have their costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

35. **THIS COURT ORDERS** that the Receiver shall, as soon as reasonably practicable and in any event no later than (i) November 3, 2021, or (ii) such later date as may be ordered by this Court, on notice to the Service List, seek Court approval of a marketing and sale process in respect of the Real Properties.

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## SCHEDULE "A"

<b>Individuals</b>
Allan Gross
Errol Yim and Andrea Yim, jointly
Ava Gross
Karen Nakagawa and Calvin Nakagawa, jointly
Carol Jaxon
Carole Kai Onouye
Diane Curtis
Dwight Otani and Theresa Otani, jointly
Edward Bugarin
Ellen Fleishman
Gemie Arakawa
George Tamashiro
Guy Pace and Caroline Berdusco, jointly
Heidi Berger
Henry Ko
Hongwei Su
James Brand
Janis L. Lai Trustee
Jean Morel
Jian Zhang
Johann Strasser
John Dattomo and Daniela Dattomo
Kelly Ann Hiraki and Jonathan Wah Hee Hee, jointly
Randall Y.C. Ho
Robert Atkinson
Roberta Sunahara and Paul Sunahara, jointly
Seymour Kazimirski
Stanley Salcedo

<b>Trusts</b>
Charlyn Shizue Honda Masini Trust, by and through its trustee(s)
Fleishman Family Trust, by and through its trustee(s)
J. Zachery Jones Trust, by and through its trustee(s)
Jane Shigeta Revocable Living Trust, by and through its trustee(s)
Jasen Takei Revocable Living Trust, by and through its trustee(s)
Melvin Shigeta Revocable Living Trust, by and through its trustee(s)
Ruth Hisaye Honda Trust, by and through its trustee(s)
S. Bucky Revocable Living Trust & Bruce E. Bucky Revocable Living Trust, by and through its trustee(s)
Wallace K. Tsuha Trust, by and through its trustee(s)
<b>Corporations / Partnerships</b>
1236068 Ontario Limited
1649750 Ontario Inc.
1818019 Ontario Limited
Citydrill Inc.
Gross Capital Inc.
Dirk and Dale IRA LLC
Gross Medical Opportunities Fund LP
Hybrid Activities Inc.
Mark Craig Gross Holdings Inc.
Randy 88, LLC
Rastogi Medicine Professional Corporation
RMK IRA LLC

**SCHEDULE "B"**  
**"Real Properties"**

**Municipal Address:** 304 Victoria Avenue North, Hamilton

**Legal Descriptions:** PIN 17187-0013 (LT): LT 7, PL 33; LTS 1, 2, 3, 4, 5, 6, 7 & 8, PL 137;  
HAMILTON

**Municipal Address:** 414 Victoria Avenue North, Hamilton

**Legal Description:** PIN 17188-0018(LT): LT 38, PL 254 ; PT LT 37, PL 254 ; PT LTS 8, 9, 10,  
11 & 12, PL 288 ; PT ALLEYWAY, PL 288, PART 1, 62R8027; HAMILTON



## SCHEDULE "C"

### RECEIVER'S CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that KPMG Inc., the receiver (the "**Receiver**") of (i) all of the assets, undertakings and properties, including, without limitation, the properties with legal descriptions set out on Schedule "B" of the Order (as defined below) (the "**Real Properties**") of Victoria Avenue North Holdings Inc. (the "**Legal Owner**") acquired for, or used in relation to the Legal Owner's business (collectively, the "**Legal Owner's Property**"), and (ii) all right, title and interest of any beneficial owners (the "**Beneficial Owners**") in and to the Legal Owner's Property, including the Real Properties and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others, including the Beneficial Owners who are Respondents in these proceedings and are listed on Schedule "A" of the Order (as defined below) (collectively, the "**Beneficial Owners' Property**" and together with the Legal Owner's Property, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 3<sup>rd</sup> day of August, 2021 (the "**Order**") made in an action having Court file number CV-21-00665375-00CL, has received as such Receiver from the holders of this certificate, being American General Life Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA. (collectively, the "**Lenders**"), the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lenders with interest thereon calculated in accordance with the Receiver Term Sheet (as defined in the Affidavit of Jacob Baron sworn July 9, 2021).

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself

out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable in accordance with the Receiver Term Sheet.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holders of this certificate without the prior written consent of the holders of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal or corporate liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2021.

**KPMG INC.**, solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per: \_\_\_\_\_

Name:

Title:

AMERICAN GENERAL LIFE INSURANCY COMPANY *et al.*  
Applicants

- and - VICTORIA AVENUE NORTH HOLDINGS INC. *et al.*  
Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**ORDER  
(Appointing Receiver)**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V  
Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri**, LSO #63867A  
Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Jules Monteyne**, LSO #72980C  
Email: [jules.monteyne@blakes.com](mailto:jules.monteyne@blakes.com)  
Tel: 416-863-5256  
Fax: 416-863-2653

Lawyers for the Applicants

## **APPENDIX “C”**



- 2 -

(i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.) (“**Southmount**”), 180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc., Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owners, the “**Debtors**”), but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (together with the Legal Owners’ Property, the “**Receivership Assets**”), for an Order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of the Legal Owners (other than Southmount and Vine Co.) and certain related parties;
- (iv) approving the activities of the Receiver, as set out in the Receiver’s First Report to Court dated October 21, 2021 (the “**First Report**”) and the Receiver’s Second Report to the Court dated May 13, 2022 (the “**Second Report**”); and
- (v) sealing Confidential Appendices “A”, “B” and “C” to the Second Report and Confidential Appendices “A” and “B” to the Supplement to the Second Report of the

- 3 -

Receiver dated May 20, 2022 (the “**Supplemental Report**” and such Confidential Appendices being, collectively, the “**Confidential Appendices**”);  
was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver’s Notice of Motion, the First Report and the appendices thereto, the Second Report and the appendices thereto, the Supplemental Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of Nancy Thompson sworn May 17, 2022 (the “**Thompson Affidavit**”):

**SERVICE**

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver’s Notice of Motion and Motion Record as set out in the Thompson Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

**PAYMENT OF BROKER COMMISSIONS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Second Report) to the Broker as and when the applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

**RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to:  
(a) repay all indebtedness outstanding under Receiver’s Certificates (as defined in the Appointment Order) issued under the term sheet among the Applicants and the

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Receiver, dated June 18, 2021 from the Net Proceeds of Sale (as defined in the Second Report) and any other funds in the possession of the Receiver (the “**Receivership Cash**”);

- (b) distribute to the Applicants by way of one or more distributions from the Receivership Cash at the time or times determined by the Receiver, in its sole discretion;

subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver’s Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below).

**BANKRUPTCY OF 180 VINE PURCHASER INC.**

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to file and assignment in bankruptcy on behalf of 180 Vine Purchaser Inc. (“**Vine Purchaser**”), or to consent to the making of a bankruptcy order against Vine Purchaser.

**PROCEDURAL CONSOLIDATION**

5. THIS COURT ORDERS that following any assignment in bankruptcy by or on behalf of the Legal Owners other than Southmount and Vine Co. (the “**Bankruptcy Legal Owners**”) and Victoria Avenue North Holdings Inc. (“**Victoria**”), KPMG Inc., in its capacity as the bankruptcy trustee of the Bankruptcy Legal Owners and Victoria (the “**Trustee**”) shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a



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consolidated basis (the “**Consolidated Proceedings**”) and a copy of this order will be filed in the court file for each of the estates of the Bankruptcy Legal Owners and Victoria.

6. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:

- a) the meetings of creditors of the Bankruptcy Legal Owners and Victoria may be convened and conducted jointly,
- b) the Trustee is authorized to issue consolidated reports in respect of the Bankruptcy Legal Owners and Victoria; and
- c) the Trustee is authorized to deal with all filings and notices relating to the bankruptcy on a consolidated basis

7. **THIS COURT ORDERS** that the Consolidated Proceeding will be in relation to procedural matters only and do not:

- a) affect the separate legal status of the corporate structure of the Bankruptcy Legal Owners and Victoria;
- b) cause any of the Bankruptcy Legal Owners or Victoria to be liable for any claim for which it is otherwise not liable, or cause any of the Bankruptcy Legal Owners or Victoria to have any interest in any asset which it otherwise would not have; or
- c) affect the Bankruptcy Legal Owners’ or Victoria’s filing obligations under the *Bankruptcy and Insolvency Act* (Canada).

8. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcies of the Bankruptcy Legal

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Owners, as determined by the Receiver in consultation with the Applicants (the “**Bankruptcy Costs**”).

#### **APPROVAL OF REPORTS & ACTIVITIES**

9. **THIS COURT ORDERS** that the First Report, the Second Report and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **SEALING ORDER**

10. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

#### **MISCELLANEOUS**

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

  
\_\_\_\_\_

Court File No.: CV-21-00664273-00CL

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*  
Applicants

- and -  
SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*  
Respondents

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**DISTRIBUTION AND ANCILLARY  
MATTERS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Pamela L.J. Huff, LSO #27344V**

Tel: 416-863-2958

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri, LSO #63867A**

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**Chris Burr, LSO #55172H**

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Alexia Parente, LSO #81927G**

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Lawyers for the Receiver

the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (15.5% of the population).

There is a growing awareness of the need to address the health and social care needs of the ageing population. The Department of Health (2001) has set out a strategy for the care of the elderly, and the Health Research Council (2002) has set out a research agenda for the care of the elderly.

The aim of this paper is to review the current research on the health and social care needs of the ageing population, and to identify areas for further research.

The paper is organized as follows. First, we discuss the current research on the health and social care needs of the ageing population. Second, we identify areas for further research.

Finally, we discuss the implications of the current research for the health and social care needs of the ageing population.

## Background

The ageing population is a major public health and social care issue. The number of people aged 65 and over in the UK has increased from 10.5 million in 1990 to 13.5 million in 2000 (15.5% of the population).

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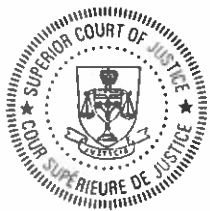
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Court File No. CV-21-00664273-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

TUESDAY, THE 15th

JUSTICE MCEWEN )

DAY OF JULY, 2022

BETWEEN:

AMERICAN GENERAL LIFE INSURANCE COMPANY,  
LEXINGTON INSURANCE COMPANY, AND  
THE VARIABLE ANNUITY LIFE INSURANCE COMPANY

Applicants

- and -

SOUTHMOUNT HEALTHCARE CENTRE INC., 180 VINE INC., 2478658  
ONTARIO LTD., 2009 LONG LAKE HOLDINGS INC., 65 LARCH  
HOLDINGS INC., 100 COLBORNE HOLDINGS INC., 240 OLD  
PENETANGUISH HOLDINGS INC., GROSS PROPERTIES INC., 180 VINE  
PURCHASER INC., AND 2413667 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985,  
c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43**

**DISTRIBUTION AND ANCILLARY MATTERS ORDER**

**THIS MOTION**, made by KPMG Inc.. in its capacity as Court-appointed receiver and manager (the "Receiver") without security of the assets, undertakings and properties, including, without limitation, the real properties with legal descriptions set out in **Schedule "A"** (the "Real Property") of the Appointment Order granted on June 29, 2021 (the "Appointment Order") of:

- 2 -

(i) Southmount Healthcare Centre Inc. (formerly Carriage Gate Group Inc.) (“**Southmount**”), 180 Vine Inc. (“**Vine Co.**”), 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the “**Legal Owners**”) acquired for, or used in relation to the Legal Owners’ business, including any interest held by Vine Co. to which Her Majesty the Queen in Right of Ontario (the “**Crown**”) may have rights and any interest in the applicable real property conveyed by the Crown to 180 Vine Purchaser Inc. (collectively, the “**Legal Owners’ Property**”), and (ii) 180 Vine Purchaser Inc. (“**Vine Purchaser Co.**”), Gross Properties Inc. and 2413667 Ontario Inc. (collectively, the “**Beneficial Owners**”, and together with the Legal Owners, the “**Debtors**”), but solely in respect of all of the Beneficial Owners’ right, title and interest in and to the Legal Owners’ Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by the Beneficial Owners for themselves or for others (together with the Legal Owners’ Property, the “**Receivership Assets**”), for an Order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make certain additional distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of Southmount, Vine Purchaser Co. with the bankruptcy proceedings of the other Legal Owners and Victoria Avenue North Holdings Inc. (“**Victoria Avenue**”);
- (iv) approving the activities of the Receiver, as set out in the Supplement to the Second Report of the Receiver dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Third Report dated July 5, 2022 (the “**Third Report**”); and
- (v) sealing Confidential Appendices “A” and “B” to the Third Report (such Confidential Appendices being, collectively, the “**Confidential Appendices**”);

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver's Notice of Motion, the Receiver's First Report dated October 21, 2021, the Receiver's Second Report dated May 13, 2022 and the appendices thereto (the "**Second Report**"), the Supplemental Report and the appendices thereto, the Third Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants, and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Alexia Parente sworn July 6, 2022 (the "**Parente Affidavit**"):

**SERVICE**

1. **THIS COURT ORDERS** that the manner and time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Parente Affidavit are hereby abridged and validated, so that this motion is properly returnable today.

**PAYMENT OF BROKER COMMISSIONS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Third Report) to the Broker as and when the applicable sale transactions close, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

**RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute to the Applicants by way of one or more distributions from the Net Proceeds of Sale (as defined in the Third Report) and any other funds in the possession of the Receiver, at the time or times determined by the Receiver, in its sole discretion, subject to the maintenance of a reserve, in an

amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver's Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below), and (v) satisfy any claim of Enersavings Inc. in respect of the 65 Larch Construction Lien (as defined in the Third Report) to the extent that such claims rank senior to the claims of the Applicants against the Net Proceeds of Sale (as determined by the agreement amongst Enersavings Inc., the Applicants and the Receiver or ordered by the Court) in an amount not to exceed \$160,252.

#### **PROCEDURAL CONSOLIDATION**

4. **THIS COURT ORDERS** that following any assignment in bankruptcy by or on behalf of Southmount and Vine Purchaser Co., KPMG Inc. in its capacity as bankruptcy trustee of Vine Purchaser Co., Southmount and the other Legal Owners (collectively, the "**Bankruptcy Legal Owners**") and Victoria Avenue (in such, the "**Trustee**"), shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a consolidated basis (the "**Consolidated Proceedings**") and a copy of this order will be filed in the court file for each of the estates of the Bankruptcy Legal Owners and Victoria Avenue.

5. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:



- (i) the meetings of creditors of the Bankruptcy Legal Owners and Victoria Avenue may be convened and conducted jointly,
- (ii) the Trustee is authorized to issue consolidated reports in respect of the Bankruptcy Legal Owners and Victoria Avenue; and
- (iii) the Trustee is authorized to deal with all filings and notices relating to the bankruptcies of the Bankruptcy Legal Owners and Victoria Avenue on a consolidated basis.

6. **THIS COURT ORDERS** that the Consolidated Proceedings will be in relation to procedural matters only and do not:

- (i) affect the separate legal status of the corporate structure of the Bankruptcy Legal Owners and Victoria Avenue;
- (ii) cause any of the Bankruptcy Legal Owners or Victoria Avenue to be liable for any claim for which it is otherwise not liable, or cause any of the Bankruptcy Legal Owners or Victoria Avenue to have any interest in any asset which it otherwise would not have; or
- (iii) affect the Bankruptcy Legal Owners' or Victoria Avenue's filing obligations under the Bankruptcy and Insolvency Act (Canada).

7. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcies of Southmount and Vine Purchaser Co., as determined by the Receiver in consultation with the Applicants (the "**Bankruptcy Costs**") and, for greater certainty, the Trustee shall be entitled to maintain a single estate trust account in respect of the funds received by it from the Receiver in respect of the

bankruptcy proceedings of all the Bankruptcy Legal Owners, to the extent such bankruptcy proceedings are procedurally consolidated.

#### **APPROVAL OF REPORTS & ACTIVITIES**

8. **THIS COURT ORDERS** that the Supplemental Report, the Third Report and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **SEALING ORDER**

9. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

#### **MISCELLANEOUS**

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'M. J. ...', is written over a horizontal line.

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*  
Applicants

- and -  
SOUTHMOUNT HEALTHCARE CENTRE INC., *et al.*  
Respondents

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**DISTRIBUTION AND ANCILLARY  
MATTERS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V

Tel: 416-863-2958

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Alexia Parente**, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

Lawyers for the Receiver

## **APPENDIX “D”**



- 2 -

together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an order, among other things:

- (i) authorizing the Receiver to pay commissions to CBRE Limited (the “**Broker**”);
- (ii) authorizing the Receiver to make distributions to the Applicants;
- (iii) procedurally consolidating the bankruptcy proceedings of the Legal Owner and certain related parties;
- (iv) approving the activities of the Receiver, as set out in the Receiver’s First Report to Court dated October 21, 2021 (the “**First Report**”), the Receiver’s Second Report to the Court dated October 22, 2021 (the “**Second Report**”) and the Receiver’s Third Report to Court dated May 13, 2022 (the “**Third Report**”, together with the First Report and the Second Report, the “**Reports**”);
- (v) dispensing with the requirement that the Receiver and its counsel, Blake, Cassels & Graydon LLP and Norton Rose Fulbright Canada LLP, obtain Court approval of their fees and disbursements (“**Accounts**”); and
- (vi) sealing Confidential Appendices “A” and “B” to the Third Report (collectively, the “**Confidential Appendices**”).

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver’s Notice of Motion, the Reports and the appendices thereto, the Supplement to the Third Report of the Receiver dated May 20, 2022, and on hearing the submissions of counsel for the Receiver, the Applicants and those other counsel and parties listed

- 3 -

on the Participant Information Form, no one else appearing although properly served with the Receiver's Motion Record as appears from the affidavit of Nancy Thompson sworn May 17, 2022 (the "**Thompson Affidavit**"):

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

#### **PAYMENT OF BROKER COMMISSIONS**

2. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commissions (as defined in the Third Report) to the Broker as and when the sale transaction closes, out of the proceeds thereof, in each case in such amounts as are prescribed by the terms of the broker listing agreement dated as of October 20, 2021 among the Debtors and the Broker.

#### **RESERVE AND DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to:

(a) repay all indebtedness outstanding under Receiver's Certificates (as defined in the Appointment Order) issued under the term sheet among the Applicants and the Receiver, dated July 9, 2021 from the Net Proceeds of Sale (as defined in the Third Report) and any other funds in the possession of the Receiver (the "**Receivership Cash**");

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- (b) distribute to the Applicants by way of one or more distributions from the Receivership Cash at the time or times determined by the Receiver, in its sole discretion;

subject to the maintenance of a reserve, in an amount satisfactory to the Receiver, in consultation with the Applicants, or in an amount otherwise ordered by the Court, to: (i) fund the fees and disbursements of the Receiver and its counsel, (ii) fund operating costs and expenses of the Debtors incurred in relation to the Receivership Assets since the date of the Appointment Order, (iii) secure the obligations under the Receiver's Charge (as defined in the Appointment Order), and (iv) fund the Bankruptcy Costs (defined below).

#### **PROCEDURAL CONSOLIDATION**

4. **THIS COURT ORDERS** that following any assignment in bankruptcy by or on behalf of (a) the Legal Owner and (b) 2478658 Ontario Ltd., 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., and 240 Old Penetanguish Holdings Inc. (collectively, the "**Other Legal Owners**"), KPMG Inc., in its capacity as the bankruptcy trustee of the Legal Owner and the Other Legal Owners (the "**Trustee**") shall be entitled to administer the procedural matters relating to those bankruptcy proceedings on a consolidated basis (the "**Consolidated Proceedings**") and a copy of this order will be filed in the court file for each of the estates of the Legal Owner and the Other Legal Owners.

5. **THIS COURT ORDERS** that the Trustee is authorized to carry out its administrative duties and responsibilities as trustee in bankruptcy as if the Consolidated Proceedings were a single proceeding under the *Bankruptcy and Insolvency Act* (Canada), including without limitation:



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- a) the meetings of creditors of the Legal Owner and the Other Legal Owners may be convened and conducted jointly,
- b) the Trustee is authorized to issue consolidated reports in respect of the Legal Owner and the Other Legal Owners; and
- c) the Trustee is authorized to deal with all filings and notices relating to the bankruptcy on a consolidated basis.

6. **THIS COURT ORDERS** that the Consolidated Proceeding will be in relation to procedural matters only and do not:

- a) affect the separate legal status of the corporate structure of the Legal Owner and the Other Legal Owners;
- b) cause any of the Legal Owner and the Other Legal Owners to be liable for any claim for which it is otherwise not liable, or cause any of the Legal Owner and the Other Legal Owners to have any interest in any asset which it otherwise would not have; or
- c) affect the Legal Owner's or the Other Legal Owners' filing obligations under the *Bankruptcy and Insolvency Act (Canada)*.

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7. **THIS COURT ORDERS** that the Receiver shall be permitted to transfer to the Trustee from time to time funding for costs associated with the bankruptcy of the Legal Owner, as determined by the Receiver in consultation with the Applicants (the “**Bankruptcy Costs**”).

#### **APPROVAL OF REPORTS & ACTIVITIES**

8. **THIS COURT ORDERS** that the Reports and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **DISPENSING WITH REQUIREMENT TO PASS ACCOUNTS**

9. **THIS COURT ORDERS AND DECLARES** that the requirement of the Receiver and its legal counsel (including any independent counsel) pursuant to Paragraph 19 of the Appointment Order to pass their Accounts is hereby waived and dispensed with: (a) in respect of the period up to and including March 31, 2022, and (b) in respect of the period from and after March 31, 2022, provided that (i) the Receiver provides the Applicants with a written statement of the quantum of such Accounts from time to time, and (ii) none of the Applicants requests in writing that the Receiver or its counsel pass their Accounts for such period prior to the discharge of the Receiver.

#### **SEALING ORDER**

10. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record.

#### **MISCELLANEOUS**

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

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effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



---

## Schedule A

### Individuals

Allan Gross  
Errol Yim and Andrea Yim, jointly  
Ava Gross  
Karen Nakagawa and Calvin Nakagawa,  
jointly  
Carol Jaxon  
Carole Kai Onouye  
Diane Curtis  
Dwight Otani and Theresa Otani, jointly  
Edward Bugarin  
Ellen Fleishman  
Gemie Arakawa  
George Tamashiro  
Guy Pace and Caroline Berdusco, jointly  
Heidi Berger  
Henry Ko  
Hongwei Su  
James Brand  
Janis L. Lai Trustee  
Jean Morel  
Jian Zhang  
Johann Strasser  
John Dattomo and Daniela Dattomo  
Kelly Ann Hiraki and Jonathan Wah Hee  
Hee, jointly  
Randall Y.C. Ho  
Robert Atkinson  
Roberta Sunahara and Paul Sunahara,  
jointly  
Seymour Kazimirski  
Stanley Salcedo

### Trusts

Charlyn Shizue Honda Masini Trust, by  
and through its trustee(s)  
Fleishman Family Trust, by and through  
its trustee(s)  
J. Zachery Jones Trust, by and through its  
trustee(s)  
Jane Shigeta Revocable Living Trust, by  
and through its trustee(s)  
Jasen Takei Revocable Living Trust, by  
and through its trustee(s)  
Melvin Shigeta Revocable Living Trust,  
by and through its trustee(s)  
Ruth Hisaye Honda Trust, by and through  
its trustee(s)  
S. Bucky Revocable Living Trust &  
Bruce E. Bucky Revocable Living Trust,  
by and through its trustee(s)  
Wallace K. Tsuha Trust, by and through  
its trustee(s)

### Corporations / Partnerships

1236068 Ontario Limited  
1649750 Ontario Inc.  
1818019 Ontario Limited  
Citydrill Inc.  
Gross Capital Inc.  
Dirk and Dale IRA LLC  
Gross Medical Opportunities Fund LP  
Hybrid Activities Inc.  
Mark Craig Gross Holdings Inc.  
Randy 88, LLC  
Rastogi Medicine Professional  
Corporation  
RMK IRA LLC

Court File No.: CV-21-00665375-00CL

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*  
Applicants

- and -  
VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**DISTRIBUTION AND ANCILLIARY  
MATTERS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street

Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V

Tel: 416-863-2958

Email: [pamela.huff@blakes.com](mailto:pamela.huff@blakes.com)

**Aryo Shalviri**, LSO #63867A

Tel: 416-863-2962

Email: [aryo.shalviri@blakes.com](mailto:aryo.shalviri@blakes.com)

**Chris Burr**, LSO #55172H

Tel: 416-863-3261

Email: [chris.burr@blakes.com](mailto:chris.burr@blakes.com)

**Alexia Parente**, LSO #81927G

Tel: 416-863-2417

Fax: 416-863-2653

Email: [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

Lawyers for the Receiver





- 2 -

together with the Legal Owner, the “**Debtors**”), but solely in respect of all of each Beneficial Owner’s right, title and interest in and to the Legal Owner’s Property, including the Real Property and all proceeds thereof, whether held directly or indirectly by any Beneficial Owner for themselves or for others (together with the Legal Owner’s Property, the “**Receivership Assets**”), for an order, among other things:

- (i) approving the extension of the term of the term sheet among the Applicants and the Receiver dated as of July 9, 2021 (the “**Receiver Term Sheet**”);
- (ii) authorizing the Receiver to pay the commission of CBRE Limited (the “**Broker**”);
- (iii) authorizing the Receiver to repay the indebtedness outstanding under the Receiver’s Certificates (as defined in the Appointment Order);
- (iv) approving the activities of the Receiver, as set out in the Receiver’s Supplement to the Third Report dated May 20, 2022 (the “**Supplemental Report**”) and the Receiver’s Fourth Report to the Court dated October 4, 2022 (the “**Fourth Report**”, together with the Supplemental Report, the “**Reports**”); and
- (v) sealing Confidential Appendix “A” and Confidential Appendix “B” to the Fourth Report (collectively, the “**Confidential Appendices**”)

was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Receiver’s Notice of Motion, the Receiver’s Third Report dated May 13, 2022, the Reports and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicants and those other counsel and parties listed on the Participant Information Form, no one else appearing although properly served with the Receiver’s Motion Record as appears from the affidavit of service of Nancy Thompson sworn October 5, 2022 (the “**Thompson Affidavit**”):



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## **SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record as set out in the Thompson Affidavit is hereby abridged, and the method of service validated pursuant to the Order of Mr. Justice Koehnen granted on September 14, 2021, so that this motion is properly returnable today.

## **RECEIVER TERM SHEET**

2. **THIS COURT ORDERS** that (i) the Receiver's execution of amending agreements with the Applicants dated as of June 22, 2022 and September 21, 2022, amending the definition of "Initial Term" under the Receiver's term sheet dated as of July 9, 2021 (as amended, the "**Receiver Term Sheet**") to "December 31, 2022" is authorized and approved, and (ii) the Receiver's Borrowings Charge (as defined in the Appointment Order) shall continue to secure all amounts owing pursuant to the Receiver Term Sheet, as amended, with the same priority provided for in the Appointment Order.

## **REPAYMENT OF RECEIVER'S BORROWINGS**

3. **THIS COURT ORDERS** that the Receiver is hereby authorized to repay all indebtedness outstanding under the Receiver's Certificate (as defined in the Appointment Order) issued under the Receiver Term Sheet from the Net Proceeds (as defined in the Fourth Report).

## **PAYMENT OF BROKER COMMISSION**

4. **THIS COURT ORDERS AND DECLARES** that the Receiver is authorized and directed to pay the Commission (as defined in the Fourth Report) to the Broker as and when the Proposed Transaction (as defined in the Fourth Report) closes, out of the Net Proceeds, in such amount as is prescribed by the terms of the Broker Engagement Agreement, as amended (as defined in the Fourth Report).

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### **APPROVAL OF REPORT & ACTIVITIES**

5. **THIS COURT ORDERS** that the Reports and the activities of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

### **SEALING ORDER**

6. **THIS COURT ORDERS** that the Confidential Appendices are hereby sealed and shall not form part of the public record, pending further Order of this Court.

### **MISCELLANEOUS**

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



Digitally signed by  
Mr. Justice  
Cavanagh

---

## Schedule A

### Individuals

Allan Gross  
Errol Yim and Andrea Yim, jointly  
Ava Gross  
Karen Nakagawa and Calvin Nakagawa,  
jointly  
Carol Jaxon  
Carole Kai Onouye  
Diane Curtis  
Dwight Otani and Theresa Otani, jointly  
Edward Bugarin  
Ellen Fleishman  
Gemie Arakawa  
George Tamashiro  
Guy Pace and Caroline Berdusco, jointly  
Heidi Berger  
Henry Ko  
Hongwei Su  
James Brand  
Janis L. Lai Trustee  
Jean Morel  
Jian Zhang  
Johann Strasser  
John Dattomo and Daniela Dattomo  
Kelly Ann Hiraki and Jonathan Wah Hee  
Hee, jointly  
Randall Y.C. Ho  
Robert Atkinson  
Roberta Sunahara and Paul Sunahara,  
jointly  
Seymour Kazimirski  
Stanley Salcedo

### Trusts

Charlyn Shizue Honda Masini Trust, by  
and through its trustee(s)  
Fleishman Family Trust, by and through  
its trustee(s)  
J. Zachery Jones Trust, by and through its  
trustee(s)  
Jane Shigeta Revocable Living Trust, by  
and through its trustee(s)  
Jasen Takei Revocable Living Trust, by  
and through its trustee(s)  
Melvin Shigeta Revocable Living Trust,  
by and through its trustee(s)  
Ruth Hisaye Honda Trust, by and through  
its trustee(s)  
S. Bucky Revocable Living Trust &  
Bruce E. Bucky Revocable Living Trust,  
by and through its trustee(s)  
Wallace K. Tsuha Trust, by and through  
its trustee(s)

### Corporations / Partnerships

1236068 Ontario Limited  
1649750 Ontario Inc.  
1818019 Ontario Limited  
Citydrill Inc.  
Gross Capital Inc.  
Dirk and Dale IRA LLC  
Gross Medical Opportunities Fund LP  
Hybrid Activities Inc.  
Mark Craig Gross Holdings Inc.  
Randy 88, LLC  
Rastogi Medicine Professional  
Corporation  
RMK IRA LLC

AMERICAN GENERAL LIFE INSURANCE COMPANY, *et al.*  
Applicants

- and - VICTORIA AVENUE NORTH HOLDINGS INC., *et al.*  
Respondents

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**DISTRIBUTION AND ANCILLIARY  
MATTERS ORDER**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Pamela L.J. Huff**, LSO #27344V

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**Chris Burr**, LSO #55172H

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**Alexia Parente**, LSO #81927G

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Email: [alexia.parente@blakes.com](mailto:alexia.parente@blakes.com)

Lawyers for the Receiver

## **APPENDIX “E”**

November 18, 2021

**Sent by Email**

Horlick Levitt Di Lella LLP  
100 Sheppard Avenue East, Suite 204  
Toronto, ON M2N 6N5

Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Attention: Douglas Levitt, Timothy Duggan and  
Alexander Etkin**

**Evan Cobb**  
+1 416.216.1929  
[Evan.Cobb@nortonrosefulbright.com](mailto:Evan.Cobb@nortonrosefulbright.com)

Dear Sirs:

**Receivership Proceedings of Southmount Healthcare Centre Inc., et. al**

We are counsel to KPMG Inc., in its capacity as receiver and manager (in such capacity, the **"Receiver"**) of 2009 Long Lake Holdings Inc., 65 Larch Holdings Inc., 100 Colborne Holdings Inc., 240 Old Penetanguish Holdings Inc., Victoria Avenue North Holdings Inc., 2478658 Ontario Ltd., among other parties (collectively, the **"Receivership Entities"**), appointed pursuant to the orders of Mr. Justice Dunphy, dated June 29, 2021 and Mr. Justice Koehnen, dated August 3, 2021 (the **"Appointment Orders"**).

Pursuant to paragraphs 8 and 9 of the Appointment Orders, no proceedings shall be commenced or continued against the Receivership Entities, or their property, including to the extent Gross Properties Inc. has any interest in such properties, except with the written consent of the Receiver or with leave of the Court (the **"Stay of Proceedings"**).

The Receiver understands that your clients have commenced an action against certain of the Receivership Entities and Gross Properties Inc. in the Ontario Superior Court of Justice under Court File No. CV-21-00666297-0000 (the **"Shao / Xing Action"**).

The Shao / Xing Action is currently stayed pursuant to the Stay of Proceedings and the Receiver does not intend to take any steps in connection with this litigation.

The Receiver would consent to lift the Stay of Proceedings to the extent required to permit the Shao / Xing Action to proceed against any defendants in the Shao / Xing Action other than the Receivership Entities or Gross Properties Inc.'s interest in the assets of the Receivership Entities, and for any related counterclaims or third party claims to proceed, provided that:

- (a) no further steps shall be taken in the Shao / Xing Action against the Receivership Entities or their property, or any interest of Gross Properties Inc. therein, and neither the Receivership Entities nor the Receiver will be required to take any steps or actions in the Shao / Xing Action, including, without limitation, filing a statement of defence or participating in any discovery or production, and the plaintiffs in the Shao / Xing Action will not seek default judgment or any other relief as a result of any such steps or actions not taken, in each case without the Receiver's consent or order of the Court;
- (b) the plaintiffs in the Shao / Xing Action acknowledge that any interest or claim they may have against the property, interests or undertakings of the Receivership Entities or the interest of Gross Properties Inc.

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therein is subordinate in all respects to the Receiver's Charge and the Receiver's Borrowings Charge, each as defined in the Appointment Orders; and

- (c) the Receiver's consent to lift the Stay of Proceedings is without prejudice to any rights, remedies or arguments that may be available to the Receivership Entities, Gross Properties Inc. or the Receiver, including to challenge the validity or quantum of the claims of the plaintiffs in the Shao / Xing Action.

The Receiver's consent, on the foregoing terms, shall be effective immediately upon receipt by the Receiver of your clients' signed acknowledgement of, and agreement to, the foregoing conditions.

The Receiver understands that your clients, Awei Liu and Yi Jin, have also commenced proceedings against Gross Capital Inc., among others under Court File No. CV-21-00669858-0000 (the "**Liu / Jin Action**"). To the extent any remedies sought in the Liu / Jin Action affect in any way the Receivership Entities, their property or the interests of Gross Properties Inc. therein, the Liu / Jin Action would similarly be subject to the Stay of Proceedings. Please advise if any such remedies will be sought in the Liu / Jin Action.

Please do not hesitate to contact me should you have any questions.

Yours Truly,

A handwritten signature in black ink that reads "Evan Cobb".

Evan Cobb

The undersigned hereby irrevocably acknowledges and agrees to be bound by the conditions set out in (a) through (c) of this letter agreement, and further acknowledges that the Receiver's consent to the limited lifting of the Stay of Proceedings set out above is expressly contingent upon, and in reliance on, such agreement.

_____	}	_____
Witness	}	Yuchuan Shao
_____	}	_____
Witness	}	Sanlin Shao
_____	}	_____
Witness	}	Jun Xing
_____	}	_____
Witness	}	Jianzhong Xing



## **APPENDIX “F”**

**From:** [Evan Cobb \(he/him\)](#)  
**To:** [Evan Cobb \(he/him\)](#)  
**Subject:** FW: RE: Yuchuan Shao et al. v. Mark Gross et al., CV-666297  
**Date:** January 23, 2023 9:44:20 PM  
**Attachments:** [Shao Xing Lift Stay Letter.pdf](#)

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**From:** "Cobb, Evan" <[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)>  
**Date:** 31/01/2022 at 17:56:06  
**To:** "Spencer Toole" <[stoole@hldlawyers.com](mailto:stoole@hldlawyers.com)>  
**Cc:** "katherineforbes@kpmg.ca" <[katherineforbes@kpmg.ca](mailto:katherineforbes@kpmg.ca)>, "George Bourikas (gbourikas@kpmg.ca)" <[gbourikas@kpmg.ca](mailto:gbourikas@kpmg.ca)>, "Kai Edwards" <[kedwards@hldlawyers.com](mailto:kedwards@hldlawyers.com)>  
**Subject:** RE: Yuchuan Shao et al. v. Mark Gross et al., CV-666297

Mr. Toole,

Thank you for your email.

I am writing on behalf of KPMG Inc., as receiver, and further to our letter on November 18<sup>th</sup>. A copy of that letter is attached.

The cover letter provided in your correspondence below advises that your client intends to move to address the stay of proceedings. Can you let us know what your client's intentions are regarding the stay in the Southmount Healthcare Centre Inc., et al., receivership proceeding? In particular, if there is an intention to pursue any motion to lift that stay of proceedings, please let us know.

Thanks.

**Evan Cobb**

Partner

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T: +1 416.216.1929 | M: +1 647.201.2865 | F: +1 416.216.3930  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

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**From:** Kai Edwards <kedwards@hldlawyers.com>  
**Sent:** January 27, 2022 7:22 PM  
**To:** Evan.Cobb@nortonrosefullbright.com; info@ksvadvisory.com  
**Cc:** Spencer Toole <stoole@hldlawyers.com>  
**Subject:** Yuchuan Shao et al. v. Mark Gross et al., CV-666297

**[External Email – Use Caution]**

Dear Sirs/Mesdames,

Please find attached correspondence from Spencer Toole dated January 27, 2022.

Regards,

*Kai Edwards*

Law Clerk

**HORLICK  
LEVITT  
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LLP** BARRISTERS  
& SOLICITORS

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